

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MICHAEL RHYMES,

Plaintiff,

Case No. 3:15-cv-00592-RCJ-CLB

V.

ORDER AND JUDGMENT

ARANAS, et al.,

Defendants.

13 The Court has before it Defendants', Cynthia Sablica and Dwight Neven, Motion for a Directed
14 Verdict pursuant to FRCP Rule 50. For reasons set forth below, the Court will grant the Defendants'
15 motion.

16 This is a pro se civil rights suit pursuant to 42 U.S.C. § 1983. (ECF No. 26 at 1 *passim*). Plaintiff,
17 Michael Rhymes (Plaintiff) is an inmate in the lawful custody of the Nevada Department of Corrections
18 (NDOC). *Id.* at 1. Plaintiff alleges Defendants, Cynthia Sablica (Sablica) and Dwight Neven (Neven)
19 violated his right to be free from cruel and unusual punishment under the Eighth Amendment to the United
20 States Constitution. *Id.* at 3 *passim*. Specifically, Plaintiff alleges Sablica and Neven were deliberately
21 indifferent to his serious medical need of treatment for his high blood pressure and diabetes. *Id.* The events
22 at issue in this suit allegedly occurred at the High Desert State Prison (HDSP). *Id.* at 1.

23 Plaintiff alleges Sablica and Neven acted deliberately indifferent to his medical needs by denying
24 him “access to physician prescribed, essential, life-saving medications to treat” Plaintiff’s high blood
25 pressure and diabetes “for a prolonged period of time (nearly 5 months).” (ECF No. 26 at 3). Plaintiff
26 alleges this denial led to “Plaintiff suffer[ing] from advanced neuropathy, [sic] intense pain and swelling in
27 his hands and feet, eye damage resulting [in] substantial vision loss, and painful capillary damage in his
28 limbs.” *Id.* at 3.

1 Plaintiff alleges that he did not receive his medication for an extended period of time. Under cross
2 examination, plaintiff alleges that the lack of medication for a period of time caused further damage to his
3 diabetic complications. However, he did not provide any medical or testimonial evidence to support his
4 claim of further damage. He admitted to receiving one medication each for his diabetes and high blood
5 pressure continuously during the entire time.

6 Plaintiff was not able to show that Defendant Neven, as warden of the prison, had any personal
7 participation in the medication issue. Although Defendant Sablica was a nurse, she was a nursing
8 supervisor, and, also, had no personal participation in Plaintiff's prescription issue. Plaintiff was not able
9 to show that Defendants, Sablica and Neven were aware of the delay in Plaintiff's receipt of his
10 medication during the duration of the delay. Defendant Sablica was not the nurse from whom Plaintiff
11 received his medication, nor did she have any involvement or direct contact with Plaintiff in this matter.
12 Defendant Neven did not deny Plaintiff any requested medication or treatment, as he was not personally
13 involved in the medical administration, treatment, or care of inmates. Further, Defendant Neven did not
14 receive or respond to Plaintiff's medical complaints, as he was not involved in the day-to-day operations
15 of the medical department at HDSP. Neither of the Defendants were listed as signatory to any of the
16 grievances or medical requests (kites) filed by Plaintiff.

17 The Eighth Amendment to the U.S. Constitution includes a proscription against "cruel and unusual
18 punishments." U.S. CONST. amend VIII. "[T]he primary concern of the drafters was to proscribe
19 torture(s) and other barbar(ous) methods of punishment." *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)
20 (internal quotation marks and citations omitted). Over time, this doctrine expanded to proscribe "more
21 than physically barbarous punishments" and was applied to proscribe "inhumane" methods of execution,
22 involving "torture or a lingering death." *Id.* (internal quotation marks and citations omitted). More
23 recently, the U.S. Supreme Court again expanded this doctrine to embody "broad and idealistic concepts
24 of dignity, civilized standards, humanity, and decency," while holding "repugnant to the Eighth
25 Amendment punishments which are incompatible with the evolving standards of decency that mark the
26 progress of a maturing society." *Id.* at 102-03 (internal quotation marks and citations omitted).

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1 A plaintiff alleging an Eighth Amendment claim of deliberate indifference to a serious medical
2 need must demonstrate (1) a serious medical need and (2) the defendant's deliberate indifference in
3 response. *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX*
4 *Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1197). The second element requires proof that the
5 defendants knew of an excessive risk to the inmate's health and, notwithstanding that knowledge,
6 disregarded the risk. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

7 Likewise, the Ninth Circuit has stressed that "there must be a conscious disregard of a serious risk
8 of harm for deliberate indifference to exist." *Toguchi v Chung*, 391 F.3d 1051 at 1059 (9th Cir. 2004).
9 "Deliberate indifference is a high legal standard. A showing of medical malpractice or negligence is
10 insufficient to establish a constitutional deprivation under the Eighth Amendment." *Id.* at 1060.

11 Delay of, or interference with, medical treatment can constitute deliberate indifference. *Jett vs.*
12 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *Clement vs. Gomez*, 298 F.3d 898, 905 (9th Cir. 2002);
13 *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988). However, where a prisoner is alleging a
14 delay of medical treatment gives rise to deliberate indifference, the prisoner must show that the delay led
15 to further injury. *Hallett vs. Morgan*, 296 F.3d 732, 745–46 (9th Cir. 2002); *Shapley v. Nev. Bd. of State*
16 *Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985) (per curiam).

17 Because deliberate indifference requires actual knowledge of an excessive risk, *Farmer, supra*, a
18 defendant can only be liable if the defendant personally participated in the alleged constitutional violation.
19 *See Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) ("In order for a person acting under color of state
20 law to be liable under section 1983 there must be a showing of personal participation in the alleged rights
21 deprivation..."); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) ("Liability under section 1983 arises
22 only upon a showing of personal participation by the defendant.").

23 Plaintiff has failed to satisfy the elements of his Eighth Amendment claim. While this Court finds
24 that Plaintiff set forth a factual question regarding whether he had a serious medical need, and therefore
25 assumes for purposes of Defendant's FRCP Rule 50 motion that there was a serious medical need, he
26 failed to put forth any genuine issue of material fact regarding whether these Defendants had any personal
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1 participation. Plaintiff therefore failed to provide any factual issue for the jury, and as a matter of law,
2 failed in his burden to show personal participation on the part of the Defendants. He has also failed to
3 prove continuing harm as a result of the missed medications.

4 Accordingly, it is hereby

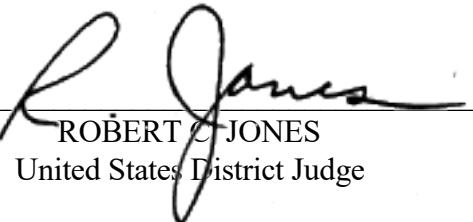
5 **ORDERED** that Defendants', Dwight Neven and Cynthia Sablica, Motion for Entry of Directed
6 Verdict is **GRANTED**; it is

7 **FURTHER ORDERED** that this Court retains jurisdiction over any matter pertaining to this
8 judgment; and it is

9 **FURTHER ORDERED** that this case is DISMISSED and the Clerk of the Court shall remove it
10 from the docket of the Court. This is a final appealable order. See FED. R. APP. P. 4(a).

11 **IT IS SO ORDERED.**

12 DATED THIS: March 2, 2020.

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15 ROBERT C. JONES
United States District Judge

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